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In the Court of Common Pleas of Erie County, Pa.

THE ERIE CANAL COMPANY vs. MORROW B. LOURY ET AL.

A court of equity will not interfere to restrain legal proceedings, where the complainant has an adequate remedy at law.

The defendants obtained judgment in this court against the plaintiffs, on their bonds given for the construction of their canal, and issued attachment executions, and attached moneys due and belonging to the company, in the hands of the president, treasurer, managers, and others, and plaintiffs filed this bill for an injunction to restrain plaintiffs from proceeding with their attachments, or any other legal proceedings, to collect their debts; to which defendants demurred, for that plaintiffs had a full and entire remedy at law, and that the court had no jurisdiction in the matter, and joinder and issue.

Douglass and Lyon, for demurrer, cited *Purdon's Digest*, page 305; *Gilder vs. Merrin*, 6 Wh. 522; *Hagner vs. Heyberger*, 7 W. & S., 104; Bri. Equity, 240-2, 49, 167; *Commonwealth vs. Bank of Pennsylvania*, 3 W. & S., 184; *Commissioners vs. Long*, 1 Par. Eq. Cases, 152; *Commonwealth vs. Rush, et al.*, 2 Harris, 186; Pur. Di. 170, sec. 84; *Idem*, 333, sec. 28; *Pleasants vs. Cowden*, 7 W. & S., 379; *Ridge Turnpike Co. vs. Peddle*, 4 Barr, 490; 1 T. & H., 123, 761, 763, 863.

Marshall, contra, cited *Bevans vs. Dingman's-Choice Turnpike*, 10 Barr, 174.

The opinion of the court was delivered Jan. 2, 1858, by

DERRICKSON, J.—The defendants bring several suits to the courts of this county, on bonds of the company, and having obtained judgments, they issued execution attachments and served them on the officers, agents and employees of the company, to obtain satisfaction. To this latter course of procedure the company objects, and has filed its present bill, asking for an injunction to restrain the defendants in their action, alleging, as a reason therefor, that the company is insolvent, and that the funds on hand are essentially

necessary to the keeping of the canal in a safe and navigable condition, and that if these funds are taken from the control of the managers, an irreparable mischief and loss must inevitably follow.

The defendants have demurred to this bill, and for the reasons assigned, ask that it may be dismissed.

Without examining the merits of the bill or determining what the ultimate issue between the parties may be, or deciding upon the jurisdiction and power of the court in the matters involved, it is enough for the present to say, that the company have the most full, ample and complete remedy in the proceedings instituted in the attachments—to an extent, perhaps, greater than it could have under the bill if it went on to a final hearing on answer and testimony. If I had any doubts of this, the action of the court might be different from what it now is. But, as the issuing of executions on judgments obtained, can in no sense be said to be contrary to law, when the record itself presents nothing to forbid it, it would be an assumption of power, which none but a chancellor of unlimited jurisdiction can exercise, to arrest the creditors in the use of the remedies to secure the fruition of what they claim to be their dues, by laying upon them the strong arm of the court. This is never to be done except where all other sources of redress at law are cut short, or the mischief sought to be prevented would be wholly irreparable.

For these reasons the demurrer is sustained, and the injunction prayed for denied.

In the Supreme Court of Pennsylvania, January, 1857.

CAMPBELL AND PHARO'S APPEAL.

SINER'S APPEAL.

1. *It seems*, that where land is sold under an executory contract, liens against the equitable estate of the vendee will be postponed to a purchase money mortgage executed on the subsequent conveyance of the legal estate, though that mortgage be not recorded within sixty days: and though it be made to a third person, and